

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

KYLE KIRKPATRICK,

Plaintiff,

vs.

DRIVING 101, LLC AND,
KANE ADAM ZITTLOW,

Defendants

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CIVIL ACTION NO.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1446(a), Defendants Driving 101, LLC ("Defendant") and Kanne Adam Zittlow file this Notice of Removal, hereby removing this action from the 431st Judicial District Court of Denton County, Texas to the United States District Court for the Eastern District of Texas, Sherman Division. Removal is based on diversity jurisdiction because there is complete diversity between Plaintiff Kyle Kirkpatrick ("Plaintiff"), and Defendants Kane Zittlow and Driving 101, LLC and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Plaintiff is a Texas citizen. Defendants are not Texas citizens. Defendant Driving 101, LLC is not a Texas corporation. Defendant Driving 101, LLC is a North Carolina corporation. Defendant Kane Adam Zittlow is a citizen of North Carolina.

I.
INTRODUCTION

1. Plaintiff filed his Original Petition on March 23, 2015 in the 431st Judicial District Court for Denton County, Texas, located at 1450 E McKinney Street, Denton, Texas 76209. Plaintiff's Petition asserts several causes of action against Defendants Driving 101, LLC and Kane Adam Zittlow, arising out of an alleged car collision, for which Plaintiff seeks recovery of compensatory damages in excess of \$1,000,000.

2. Plaintiff served Defendant Driving 101, LLC through the Secretary of State as its agent of service. See Ex. 4. The Secretary of State received the Citation and Petition on behalf of

Defendant Driving 101, LLC on April 17, 2015. See Ex. 4. Plaintiff served Kane Adam Zittlow through the Texas Transportation Commission. The Texas Transportation Commission received the Citation and Petition on behalf of Kane Adam Zittlow on April 6, 2015. See Exhibit 5. This Notice of Removal is being filed within thirty (30) days of service of the Citation and Original Petition on Driving 101, LLC and Kane Adam Zittlow and is thus timely under 28 U.S.C. §1446(b).

II.

GROUND FOR REMOVAL

3. Federal diversity jurisdiction exists over this removed action pursuant to 28 U.S.C. § 1332 because all relevant parties are diverse and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

A. There Is Complete Diversity Among the Parties.

4. Removal is proper because there is complete diversity between the parties. See 28 U.S.C. § 1332(a).

5. Plaintiff is a citizen of Texas.

6. Defendant Driving 101, LLC is a corporation organized and incorporated under the laws of North Carolina and maintains its principal place of business in Concord, North Carolina. Consequently, Driving 101, LLC is a citizen of the State of North Carolina for purposes of diversity jurisdiction.

7. Defendant Kane Adam Zittlow is an individual residing in North Carolina. Consequently, Kane Adam Zittlow is a citizen of the State of North Carolina for purposes of diversity jurisdiction.

B. The Amount In Controversy Exceeds \$75,000.

8. Plaintiff's Original Petition seeks a total amount greater than \$1,000,000. The damages claimed exceed the \$75,000 jurisdictional threshold. In this regard, the damages Plaintiff

claims in his complaint, if apparently claimed in good faith are controlling. *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288 (1938).

III.
VENUE

9. Venue for removal proper in this district and division under 28 U.S.C. § 1441(a) because this district and division embrace the Texas State District Courts of Denton County, Texas, the forum in which the removed action was previously pending.

IV.
PROCEDURAL REQUIREMENTS

10. Pursuant to 28 U.S.C. § 1446(a) and Eastern District of Texas Local Rule CV-81, the Notice of Removal has the following attachments:

- Exhibit 1: List of all parties in the case and case status
- Exhibit 2: The civil cover sheet;
- Exhibit 3: The state court docket sheet;
- Exhibit 4: Certificate of Service from Texas Secretary of State reflecting receipt of citation for Driving 101, LLC on April 17, 2015
- Exhibit 5: Certificate of Service from Texas Transportation Commission reflecting receipt of citation for Kane Adam Zittlow on April 6, 2015
- Exhibit 6: All pleadings asserting causes of action and all answers to such pleadings;
- Exhibit 7: A list of all counsel of record, including addresses, telephone numbers and parties represented; and
- Exhibit 8: A list of all parties requesting trial by jury.

11. Pursuant to 28 U.S.C. § 1446(d), written notices of filing of this Notice of Removal will be given to all adverse parties promptly after the filing of same.

12. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice of Removal will be filed with the District Clerk for the 431st Judicial District Court of Denton County, Texas promptly after filing of same.

V.
CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Defendants Driving 101, LLC and Kane Adam Zittlow respectfully request that the above-captioned action now pending in the 431st Judicial District Court of Denton County, Texas be removed to the United States District Court for the Eastern District of Texas, Sherman Division.

Respectfully Submitted,



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DRIVING 101, LLC and KANE ADAM ZITTLOW

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of May 2015, I electronically filed the foregoing document with the Clerk of the Court for the United States District Court, Eastern District of Texas, using the CM/ECF system, which will send notification of such filing to the following and I have separately sent such notification to the below:

Gregory J. McCarthy
2222 Patterson Place
Arlington, TX 76012

Via Email: gregmccarthy@sbcglobal.net
Via Facsimile: (817) 261-1688



KURT. W. MEADERS